



**AUTOMOBILE INSURERS BUREAU
OF MASSACHUSETTS
SINCE 1925**

November 28, 2017

GENERAL NOTICE G-1924

Clarification of Coordination of Benefits Under 211 CMR 38.00

The Massachusetts Division of Insurance has issued DOI Bulletin 2017-6: Clarification of Coordination of Benefits under 211 CMR 38.00 for Medical Claims Associated with Motor Vehicle Accidents. This bulletin addresses and clarifies the coordination of benefits for accident-related medical claims between fully-insured health policies and Personal Injury Protection and Medical Payments coverages in the revised Coordination of Benefits regulation, 211 CMR 38.00, effective October 7, 2016.

Please refer to Private Passenger Notice PP-078 or Commercial Auto Notice CA-051, or the Regulatory Information section of www.aib.org for regulation 211 CMR 38.00.

Included with the bulletin are two attachments: Massachusetts Coordination of Benefit Examples Associated with the handling of Motor Vehicle Accident-Related Medical Claims, and 211 CMR 38.00: Coordination of Benefits Frequently Asked Questions.

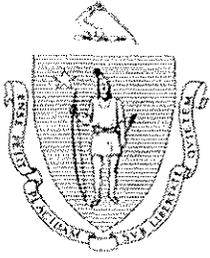
The AIB has filed a mandatory endorsement to modify the current provisions of Part 6 of the Massachusetts Automobile Insurance Policy to comply with 211 CMR 38.00. The SERFF filing number is AIBM-130772519. The AIB has also filed an Auto Medical Payments endorsement for the commercial auto program. The SERFF filing number is AIBM-130775251. Both filings are currently under review by the Division of Insurance.

Please contact Andrew Dempsey at adempsey@aib.org or extension 7706 with any questions.

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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

BULLETIN 2017-06

To: Automobile Insurers, Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and Health Maintenance Organizations

From: Gary D. Anderson, Commissioner of Insurance

Date: November 22, 2017

Re: Clarification of Coordination of Benefits under 211 CMR 38.00 for Medical Claims Associated with Motor Vehicle Accidents

On October 7, 2016, the Massachusetts Division of Insurance ("Division") adopted new rules and amendments to its Coordination of Benefits ("COB") regulation, 211 CMR 38.00. In light of the update to 211 CMR 38.00, the Division issues this Bulletin to address the coordination of benefits for accident-related medical claims between fully-insured health policies and the Personal Injury Protection ("PIP") and Medical Payments ("MedPay") benefits of motor vehicle liability policies. This Bulletin and the current version of the COB regulation replace and supersede any prior guidance regarding coordination of benefits, including B-1990-2 and Bulletin 2008-12.

Applicability of Coordination of Benefit Rules to Insured Health Plans

The provisions of 211 CMR 38.00 apply to insured health plans issued or renewed in Massachusetts. Carriers should refer to the definition of "Plan" in 211 CMR 38.02, which specifies that a Plan does not include the following:

1. Hospital Indemnity Benefits coverage or other fixed indemnity coverage;
2. Accident only coverage;
3. Specified disease or specified accident coverage;
4. Insured contracts that pay a fixed daily benefit without regard to which expenses are incurred or services received;
5. Medicare Supplement policies;

6. School accident-type coverages that cover students for accidents only, including those contracts covering students for accidents or athletic injuries, either on a 24 hour basis or on a "to and from school" basis;
7. Benefits provided in long-term care insurance policies for non-medical services or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;
8. A state plan under Medicaid; or
9. A governmental plan when, by law, its benefits are in excess of those of any private insurance plan or other nongovernmental plan.

Self-funded employment-sponsored health plans are not subject to state insurance rules and, therefore, are not bound by the provisions of 211 CMR 38.00¹. However, many self-funded employment-sponsored health plan administrators may elect to adopt the rules established within 211 CMR 38.00 to ease the administration of payments for motor vehicle accident-related medical claims.

Medical Expense Benefits within Motor Vehicle Liability Policies

PIP is a compulsory coverage included in all Massachusetts motor vehicle liability insurance policies. It can pay up to \$8,000 for a claimant's medical expenses, replacement services, lost wages, and funeral expenses. M.G.L. c. 90, §§34A and 34M define PIP benefits under a standard Massachusetts motor vehicle liability insurance policy and §34A provides for the coordination of benefits between health insurance carriers and automobile insurers.

MedPay is coverage offered as part of a motor vehicle liability insurance policy. MedPay can pay for reasonable medical and funeral expenses incurred as a result of a motor vehicle accident, as noted in M.G.L. c. 175, §111C. Although automobile insurers are required to offer MedPay coverage of "at least five thousand dollars" under M.G.L. c. 175, §113C, coverage is optional.

Coordination of Health and Automobile Insurance Benefits

The first \$2,000 in medical and funeral expenses incurred as a result of a motor vehicle accident must be submitted to the automobile insurer to be paid under PIP². Coordination of benefits becomes necessary after the first \$2,000 in medical and funeral expenses is paid under PIP.

¹ Since self-funded employee benefit plans are exempt from state insurance laws, a self-funded plan may contain language deferring primary coverage to the automobile insurer, but is not required to do so. If the self-funded plan does contain such deferral language, then the PIP insurer will not be able to rely on the coordination provisions in 211 CMR 38.00. PIP must cover up to \$8,000 in medical expenses, replacement services, funeral expenses and lost wages, and when PIP is exhausted, the Medical Payments coverage, if any, will apply.

² “[P]ersonal injury protection provisions shall not provide for payment of more than two thousand dollars of expenses incurred within two years from the date of accident for medical, surgical, X-ray and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services if, and to the extent that, such expenses have been or will be compensated, paid or indemnified pursuant to any policy of health, sickness or disability insurance or any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services.” *Creswell v. Medical West Community Health Plan, Inc.*, 419 Mass. 327, 332 (1995).

The remaining amount in PIP coverage is coordinated between the claimant's health and motor vehicle insurance plans. Once the first \$2,000 of PIP has been exhausted, any medical-related claims must be submitted to the health insurance carrier for coverage determination, if health coverage exists. The health insurance carrier cannot deny payment for medical expenses on the basis of the existence of PIP coverage. If there is a MedPay benefit within the motor vehicle policy, MedPay coverage is always secondary to and in excess of the benefits of the health coverage and the PIP benefit up to the limits of the MedPay benefit. *See* 211 CMR 38.05(1)(b).

PIP is not required to cover claims denied by a health insurance provider when the claimant has failed to comply with the requirements of the health coverage policy, e.g., by seeking out-of-network care that could have been obtained through one's health maintenance organization health insurance policy. *Dominguez v. Liberty Mut. Ins. Co.*, 429 Mass. 112, 112-113 (1999). However, if MedPay benefits are available, such denied claims would be payable under the MedPay coverage. *Mejia v. American Cas. Co.*, 55 Mass.App.Ct. 461, 466 (2002).

Coordination of benefits between health coverage, PIP and MedPay under 211 CMR 38.00³:

1. Claimant does not have health coverage or MedPay.

PIP will pay up to \$8,000 in medical expenses, replacement services, lost wages, and funeral expenses incurred as a result of an automobile accident.

2. Claimant has health coverage and does not have MedPay.

The first \$2,000 in medical and funeral expenses is covered by PIP and any medical expenses in excess of the \$2,000 PIP threshold are submitted to the health insurance carrier. If the health insurance carrier denies payment for a claim, the claimant may resubmit the claim to the motor vehicle insurer for consideration of coverage under PIP. PIP would not be required to cover a claim that was denied by the health insurance carrier for the claimant's failure to comply with the requirements of the health coverage policy, but PIP must pay for reasonable expenses not covered under the claimant's health coverage policy (e.g., copayments; deductibles; and treatment that is not covered by health insurance, such as acupuncture).

3. Claimant has MedPay and does not have health coverage.

The first \$8,000 in medical expenses, replacement services, lost wages, and funeral expenses is covered by PIP. Once PIP has been exhausted, medical and funeral expenses are submitted to MedPay for coverage up to the limits of the coverage purchased.

4. Claimant has health coverage and MedPay.

The first \$2,000 in medical and funeral expenses are covered by PIP and any medical bills in excess of the \$2,000 PIP threshold are submitted to the health insurance carrier. The health insurance carrier is responsible for payment of claims in excess of the \$2,000 PIP threshold,

³ Please note that these are general coordination of benefit rules between a fully-insured health plan and the PIP and MedPay coverages of a motor vehicle policy. Under certain circumstances, the PIP and MedPay benefits of a motor vehicle policy may be unavailable, reduced, or eliminated. *See* M.G.L. c. 90, §§34A and 34M; standard Massachusetts automobile insurance policy.

except where the health insurance carrier denies coverage for a legitimate reason (*e.g.*, claim for non-covered service). After payment is made by the health insurance carrier, the outstanding balance on the claim is then resubmitted to the motor vehicle insurer for consideration under PIP and, where PIP is unavailable or not required to pay for a claim denied by the health insurance carrier (for example, because of the claimant's failure to comply with the terms of the health policy), the claim must be covered by MedPay up to the limits of the MedPay coverage purchased.

Generally, the MedPay benefit of a motor vehicle liability policy pays for:

- applicable patient copayments, coinsurance or deductibles under the health coverage;
- health care services that are not covered services under the claimant's health coverage; or
- health care services from providers that are not part of the health coverage's network or were provided without prior authorization under the health coverage.

Restrictions on Billing Automobile Carriers for Amounts Beyond Health Carrier Payments

Where the PIP and MedPay coverages of a motor vehicle liability policy are secondary to coverage under a health plan, the coordination of benefits rules may not be used by a provider to increase the amount of payment to the provider for a service beyond the amount that the provider agreed to accept from the health insurance carrier as payment for the services. Thus, the provider may not bill the motor vehicle liability policy or the insured the difference between the provider's negotiated payment with the health insurance carrier and the provider's charge. Unless otherwise permitted under 211 CMR 38.00, the coordination of benefits rules may not be used to circumvent contractual agreements between providers and health plans by increasing the provider payment or decreasing the amount the provider has negotiated to accept in payment for services, less any required deductibles, coinsurance or copayments. Health plans should include provisions in their provider contracts to account for payments under coordination of benefits.

Limitations to Coordination of Benefits within Insured Health Plan Documents

Fully-insured health benefit plans *may not* include a "coordination of benefits" provision in their contracts making their coverage secondary to other coverage for health care services, including MedPay. Automobile insurers may continue to determine whether PIP or MedPay pays first based on the reason for the health insurance carrier's denial or based upon an exclusion under M.G.L. c. 90, §34A (*e.g.*, felonious conduct) or under the terms of the automobile insurance policy. The Division expects all health carriers to submit amendments to existing policy form materials that remove coordination of benefits provisions that are impermissible under 211 CMR 38.00 (*i.e.*, deferral to MedPay).

Effective Date of Amended Coordination of Benefits Rules

The Division expects all health and automobile insurance carriers to establish systems by no later than January 1, 2018 that comply with the provisions of 211 CMR 38.00 when responding to medical claims associated with automobile accidents that occur on and after that date.

If you have any questions about this Bulletin, please contact Kevin Beagan, Deputy Commissioner, Health Care Access Bureau, at 617-521-7323 or kevin.beagan@state.ma.us.

Massachusetts Coordination of Benefit Examples Associated with the Handling of Motor Vehicle Accident-Related Medical Claims

Please note:

The following examples apply to insured plans that are subject to 211 CMR 38.00. (*i.e.*, self-funded employer-sponsored health plans are not subject to 211 CMR 38.00). Carriers should refer to definition of "Plan" in 211 CMR 38.02 which specifies that Plan does not include the following:

1. Hospital Indemnity Benefits coverage or other fixed indemnity coverage;
2. Accident only coverage;
3. Specified disease or specified accident coverage;
4. Insured contracts that pay a fixed daily benefit without regard to which expenses are incurred or services received;
5. Medicare Supplement policies;
6. School accident-type coverages that cover students for accidents only, including those contracts covering students for accidents or athletic injuries, either on a 24 hour basis or on a "to and from school" basis;
7. Benefits provided in long-term care insurance policies for non-medical services or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;
8. A state plan under Medicaid; or
9. A governmental plan when, by law, its benefits are in excess of those of any private insurance plan or other nongovernmental plan.

Generally¹, the order of benefit determination (payment) for automobile accident-related health claims should be:

1. Automobile-accident related medical expense claims for the cost of treating a driver or passenger in the driver's automobile or pedestrian struck by the driver's automobile, are to be forwarded to the driver's automobile insurance carrier.
 - The Personal Injury Protection (PIP) benefit within the driver's automobile coverage is considered Primary for the first \$2,000 of claims. (*211 CMR 38.05(1)(a)*)
 - The first \$2,000 are to be paid by the driver's automobile insurance carrier.
2. Automobile-accident related health care claims beyond the first \$2,000 paid under the PIP benefit are to be coordinated with the patient's health coverage. The health coverage becomes Primary for all claims beyond the first \$2,000 paid by the automobile carrier. Medical claims are sent to the patient's insured health plan which pays for services covered under its policy. (*211 CMR 38.05(1)(a)*)
 - The health coverage becomes Primary for all claims beyond the first \$2,000 paid by the automobile carrier. The health carrier pays health care expenses/claims for treatment

¹ PIP benefits are not available for all motor vehicle accidents.

received in accordance with the terms of its health benefit plan (i.e., claims that are Allowable Expenses for the health benefit plan, as defined in 211 CMR 38.02).

- If the patient's health coverage is a Closed Panel Plan – as defined in 211 CMR 38.02 - claims for non-emergency health treatment may be limited to treatment delivered by network providers unless prior authorized by the health carrier.
- The PIP benefit within the driver's automobile coverage becomes Secondary for all claims beyond the first \$2,000 paid by PIP.
 - As noted in 211 CMR 38.02(d) under the definition of Allowable Expense, "any expense that a provider by law or in accordance with a contractual agreement is prohibited from charging a covered person is not an Allowable Expense." Where the Personal Injury Protection coverage and Medical Payments Coverage of a motor vehicle policy are secondary to a Health Benefit Plan, the coordination of benefits rules may not be used by a provider to increase the amount of payment to the provider by billing the motor vehicle policy the difference between the provider's negotiated payment with the health benefit plan and the provider's charge.
 - PIP benefits do not cover claims that have been denied by a health carrier because the driver/insured has failed to comply with the terms of the health benefit plan. The PIP coverage of the automobile policy is unavailable for claims the health carrier denied because treatment was not obtained in accordance with the terms of the health benefit plan. However, if MedPay benefits are available, such denied claims would be payable under the MedPay coverage.
 - The PIP benefit is limited to \$8,000. After the first \$2,000 in claims is paid by PIP, the remaining PIP benefits coordinate with health coverage.
 - The PIP benefit may be responsible to pay for:
 - ✓ applicable patient copayments, coinsurance or deductibles under the health coverage; OR
 - ✓ health care services that are not covered services under patient's health coverage.
- 3. If there is a Medical Payments (MedPay) benefit within the driver's automobile coverage, MedPay coverage is always Secondary to and in excess of the benefits of the health coverage and the PIP benefit up to the limits of the MedPay benefit. (211 CMR 38.05(1)(b))
 - The MedPay benefit may be responsible to pay for:
 - ✓ applicable patient copayments, coinsurance or deductibles under the health coverage;
 - ✓ health care services that are not covered services under patient's health coverage; OR
 - ✓ health care services from providers that are not part of the health coverage's network or were provided without prior authorization under the health coverage, if PIP benefits are unavailable.

EXAMPLE 1: Health coverage without any cost-sharing

Driver has PIP, MedPay and Healthy People HMO. Driver is hurt in an auto accident.

Total provider charges are \$12,000; the first \$2,000 in provider charges are submitted to Safe Car.

The remaining \$10,000 are submitted to Healthy People; Healthy People discounted/ negotiated rate for services sent to Healthy People HMO is \$9,000.

Under Healthy People HMO, Driver is not responsible for a deductible, copayments or coinsurance.

Auto Insurer: Safe Car Insurer		Health Insurer: Healthy People HMO	
Coverage	Limit/Deductible	Coverage	
Personal Injury Protection	\$0 Deductible \$8,000 Limit	Annual Deductible per person/year	\$0
		Annual Deductible per family/year	\$0
		Out-of-pocket Maximum	\$500
Medical Payments	\$5,000 Limit	Doctor Copay (\$) or Coinsurance (%)	\$0
		Chiropractic Copay (\$) or Coinsurance (%)	\$0
		Emerg Dept. Copay (\$) or Coinsurance (%)	\$0
		Hospital Copay (\$) or Coinsurance (%)	\$0
		X-ray/MRI Copay (\$) or Coinsurance (%)	\$0

- Personal Injury Protection (PIP) under Safe Car Insurer pays the first \$2,000 in medical claims;
- Healthy People HMO pays \$9,000
- Medical Payments under Safe Car Insurer pays \$0.
- Driver pays \$0.

EXAMPLE 2: Health coverage with cost-sharing.

Driver has PIP, MedPay and Healthy People HMO. Driver is hurt in an auto accident. Total provider charges are \$12,000; the first \$2,000 in provider charges are submitted to Safe Car. The remaining \$10,000 are submitted to Healthy People; Healthy People discounted/ negotiated rate for services sent to Healthy People is \$9,000.

Under Healthy People HMO, the Driver has \$1,450 in out-of-pocket costs:

- \$500 deductible (prior to accident, no other claims have counted toward the deductible);
- \$250 copayment for hospital stay;
- \$100 copayment for imaging (x-ray/MRI); and
- Thirty (30) doctor/PT/chiropractic visits with a total of \$600 in copayments.

Auto Insurer: Safe Car Insurer		Health Insurer: Healthy People HMO	
Coverage	Limit/Deductible	Coverage	
Personal Injury Protection	\$0 Deductible \$8,000 Limit	Annual Deductible per person/year	\$500
		Annual Deductible per family/year	\$1,000
		Out-of-pocket Maximum	\$2,000
Medical Payments	\$5,000 Limit	Doctor Copay (\$) or Coinsurance (%)	\$20
		Chiropractic Copay (\$) or Coinsurance (%)	\$20
		Hospital Copay (\$) or Coinsurance (%)	\$250
		X-ray/MRI Copay (\$) or Coinsurance (%)	\$100

- PIP under Safe Car Insurer pays the first \$2,000 in medical claims
- Healthy People HMO pays \$7,550 for covered claims beyond the first \$2,000 in medical claims:
 - \$ 500 (Healthy People HMO deductible)
 - \$ 950 (Driver's copayments under Healthy People HMO)

 - = \$7,550 Healthy People HMO payment
- PIP under Safe Car Insurer pays \$1,450 for the Driver's out-of-pocket costs (deductible and copayments).
- Medical Payments under Safe Car Insurer pays \$0.
- Driver pays \$0.

EXAMPLE 3A: Health coverage with cost-sharing

Driver has PIP, MedPay and Healthy People HMO. Driver is hurt in an auto accident. Total provider charges are \$12,000; first \$2,000 in charges are submitted to Safe Car. The remaining \$10,000 are submitted to Healthy People; Healthy People discounted/negotiated rate for all services sent to Healthy People is \$9,000.

Under Healthy People HMO, Driver would have \$5,300 in out-of-pocket costs:

- **\$3,000 deductible (prior to accident, no other claims counted toward the deductible);**
- **\$500 copayment for hospital stay;**
- **Thirty (30) doctor/PT/chiropractic visits with a total of \$1,500 in copayments; and**
- **\$300 in copayments for imaging (x-ray/ MRI).**

Auto Insurer: Safe Car Insurer		Health Insurer: Healthy People HMO	
Coverage	Limit/Deductible	Coverage	
Personal Injury Protection	\$0 Deductible \$8,000 Limit	Annual Deductible per person/year	\$3,000
		Annual Deductible per family/year	\$5,000
		Out-of-pocket Maximum	\$8,000
Medical Payments	\$5,000 Limit	Doctor Copay (\$) or Coinsurance (%)	\$50
		Chiropractic Copay (\$) or Coinsurance (%)	\$50
		Emerg Dept. Copay (\$) or Coinsurance (%)	\$100
		Hospital Copay (\$) or Coinsurance (%)	\$500
		X-ray/MRI Copay (\$) or Coinsurance (%)	\$100

- PIP under Safe Car Insurer pays the first \$2,000 in medical claims
- Healthy People HMO pays \$3,700 for covered services beyond the first \$2,000 in medical claims:
 - \$9,000 (*Healthy People HMO discounted/negotiated rate of reimbursement*)
 - \$3,000 (*Healthy People HMO deductible*)
 - \$2,300 (*Driver's copayments under Healthy People HMO*)

 - = \$3,700 Healthy People HMO payment
- PIP under Safe Car Insurer pays \$5,300 for Driver's deductible and copayments under Healthy People HMO.
- Medical Payments under Safe Car Insurer pays \$0.
- Driver pays \$0.

EXAMPLE 3B: Health coverage with higher cost-sharing that hits plan maximum out-of-pocket

Driver has PIP, MedPay and Healthy People HMO. Driver is hurt in an auto accident.

Total provider charges are \$12,000; first \$2,000 in charges are submitted to Safe Car. The remaining \$10,000 are submitted to Healthy People; Healthy People discounted/negotiated rate for all services sent to Healthy People is \$9,000.

Under Healthy People HMO, Driver has an \$8,000 out-of-pocket maximum but has incurred \$8,500 in out-of-pocket costs. The driver's \$8,500 in deductibles and copayments are limited to the \$8,000 Healthy People HMO out-of-pocket maximum:

- \$3,000 deductible (prior to accident, no other claims counted toward the deductible);
- \$1,500 copayment for hospital stay;
- Fifty (50) doctor/PT/chiropractic visits with a total of \$2,500 in copayments; and
- \$1,500 in copayments for imaging (x-ray/ MRI).

Auto Insurer: Safe Car Insurer		Health Insurer: Healthy People HMO	
Coverage	Limit/Deductible	Coverage	
Personal Injury Protection	\$0 Deductible \$8,000 Limit	Annual Deductible per person/year	\$3,000
		Annual Deductible per family/year	\$5,000
		Out-of-pocket Maximum	\$8,000
Medical Payments	\$5,000 Limit	Doctor Copay (\$) or Coinsurance (%)	\$50
		Chiropractic Copay (\$) or Coinsurance (%)	\$50
		Emerg Dept. Copay (\$) or Coinsurance (%)	\$100
		Hospital Copay (\$) or Coinsurance (%)	\$1,500
		X-ray/MRI Copay (\$) or Coinsurance (%)	\$500

- PIP under Safe Car Insurer pays the first \$2,000 in medical claims
- Healthy People HMO pays \$1,000 for covered services beyond the first \$2,000 in medical claims:
 - \$9,000 (Healthy People HMO discounted/negotiated rate of reimbursement)
 - \$8,000 (Healthy People HMO maximum Out-of-pocket)

 = \$1,000 Healthy People HMO payment

- PIP under Safe Car Insurer pays \$6,000 for the Driver's deductible and copayments under Healthy People HMO, which exhausts the \$8,000 PIP benefit.
- Medical Payments under Safe Car Insurer pays \$2,000 for the Driver's remaining deductible and copayments under Healthy People HMO that are limited to the Out-of-Pocket Maximum.
- Driver pays \$0.

* The maximum out-of-pocket (MOOP)/ out-of-pocket maximum is the most the driver can pay during his coverage period for his share of the cost of covered services. Out-of-pocket costs include deductibles, copayments and co-insurance.

EXAMPLE 4A: \$8,000 PIP deductible

Driver is hurt in an auto accident. Driver has Healthy People HMO, MedPay and PIP.

Total provider charges are \$9,000. Healthy People discounted/negotiated rate for covered services is \$8,000.

Under Healthy People HMO, Driver has \$4,000 in out-of-pocket costs for covered services:

- \$2,000 deductible (prior to car accident, \$1,000 in claims counted toward \$3,000 deductible);
- Eighteen (18) doctor/PT visits with a total of \$900 in copayments;
- \$500 copayment for Hospital stay.
- \$600 in copayments for imaging (x-rays/MRI).

Auto Insurer: Safe Car Insurer		Health Insurer: Healthy People HMO	
Coverage	Limit/Deductible	Coverage	
Personal Injury Protection	\$8,000 Deductible \$0 Coverage	Annual Deductible per person/year	\$3,000
		Annual Deductible per family/year	\$5,000
		Out-of-pocket Maximum	\$7,000
Medical Payments	\$5,000 Limit	Doctor Copay (\$) or Coinsurance (%)	\$50
		Hospital Copay (\$) or Coinsurance (%)	\$500\$100
		X-ray/MRI Copay (\$) or Coinsurance (%)	\$100
		(%)Emerg Dept. Copay (\$) or Coinsurance (%)	

- PIP under Safe Car Insurer pays \$0 because there is an \$8,000 PIP deductible.
- Healthy People HMO pays \$4,000 for covered services:
 - \$8,000 (Healthy People HMO discounted/negotiated rate of reimbursement)
 - \$2,000 (remaining Healthy People HMO deductible)
 - \$2,000 (Driver’s copayments under Healthy People HMO)

 = \$4,000 Healthy People HMO payment
- MedPay under Safe Car Insurer pays \$0 for the Driver’s deductible and copayments under Healthy People HMO (MedPay coverage is unavailable for expenses that would have been payable under PIP but for the driver’s election of a PIP deductible)
- Driver pays remaining \$4,000 in expenses.

EXAMPLE 4B: \$2,000 PIP deductible

Driver is hurt in an auto accident. Driver has Healthy People HMO, MedPay and PIP.

Total provider charges are \$10,000 (Healthy People discounted/negotiated rate for covered services is \$8,000.)

Under Healthy People HMO, Driver has \$4,000 in out-of-pocket costs for covered services:

- \$2,000 deductible (prior to car accident, \$1,000 in claims counted toward \$3,000 deductible);
- Eighteen (18) doctor/PT visits with a total of \$900 in copayments;
- \$500 copayment for Hospital stay.
- \$600 copayments for imaging (x-rays/MRI).

Auto Insurer: Safe Car Insurer		Health Insurer: Healthy People HMO	
Coverage	Limit/Deductible	Coverage	
Personal Injury Protection	\$2,000 Deductible \$6,000 Coverage after Deductible	Annual Deductible per person/year	\$3,000
		Annual Deductible per family/year	\$5,000
		Out-of-pocket Maximum	\$7,000
		Doctor Copay (\$) or Coinsurance (%)	\$50
Medical Payments	\$5,000 Limit	Hospital Copay (\$) or Coinsurance (%)	\$500\$100
		X-ray/MRI Copay (\$) or Coinsurance (%)	\$100
		(%)Emerg Dept. Copay (\$) or Coinsurance (%)	

- PIP coverage is unavailable to pay the first \$2,000 in medical expenses because the driver elected a \$2,000 PIP deductible. All provider charges for covered services are submitted to Healthy People HMO for their review.
- Healthy People HMO pays \$4,000 for covered services:
 - \$8,000 (Healthy People HMO discounted/negotiated rate of reimbursement)
 - \$2,000 (remaining Healthy People HMO deductible)
 - \$2,000 (Driver’s copayments under Healthy People HMO)

 = \$4,000 Healthy People HMO payment
- PIP under Safe Car Insurer pays \$4,000 for the Driver’s remaining out-of-pocket costs under Healthy People HMO.*
- Driver pays \$0.**

* PIP is not required to pay for a claim (with the exact CPT code and date of service) that PIP initially denied because the Driver elected a \$2000 PIP deductible. Since the provider’s negotiated/allowed amount for a service under Healthy People HMO is likely less than the provider’s charge for the service, the PIP carrier may only deny payment of the claim (with the exact CPT code and date of service) that the PIP carrier initially denied due to the Driver’s election of the \$2,000 deductible.

** If a claim (with the exact CPT code and date of service) initially denied by PIP because of the Driver’s election of a \$2000 PIP deductible is subject to the Healthy People HMO deductible, then the Driver may be responsible for payment of that particular claim.

EXAMPLE 4C: \$2,000 PIP deductible; Chiropractic not covered under health insurance coverage

Driver is hurt in an auto accident. Driver has Healthy People HMO, MedPay and PIP.
Chiropractic care is not covered by Healthy People HMO. There are chiropractic charges.

Total provider charges are \$13,000 (\$9,000 for services covered by Healthy People and \$4,000 for chiropractic care not covered by Healthy People HMO). Healthy People discounted/negotiated rate for covered services is \$8,000.

Under Healthy People HMO, Driver has \$4,000 in out-of-pocket costs for covered services:

- \$2,000 deductible (prior to car accident, \$1,000 in claims counted toward \$3,000 deductible);
- Eighteen (18) doctor/PT visits with a total of \$900 in copayments;
- \$500 copayment for Hospital stay.
- \$0 for chiropractic care since not covered under Healthy People HMO plan; and
- \$600 copayments for imaging (x-rays/MRI).

Auto Insurer: Safe Car Insurer		Health Insurer: Healthy People HMO	
Coverage	Limit/Deductible	Coverage	
Personal Injury Protection	\$2,000 Deductible \$0 Coverage	Annual Deductible per person/year	\$3,000
		Annual Deductible per family/year	\$5,000
		Out-of-pocket Maximum	\$7,000
Medical Payments	\$5,000 Limit	Doctor Copay (\$) or Coinsurance (%)	\$50
		Chiropractic Copay (\$) or Coinsurance (%)	Not covered
		Emerg Dept. Copay (\$) or Coinsurance (%)	\$100
		Hospital Copay (\$) or Coinsurance (%)	\$500
		X-ray/MRI Copay (\$) or Coinsurance (%)	\$100

- PIP coverage is unavailable to pay the first \$2,000 in medical expenses because the driver elected a \$2,000 PIP deductible. All provider charges for covered services are sent to Healthy People HMO for their review.
- Healthy People HMO pays \$4,000 for covered services:
 - \$8,000 (Healthy People HMO discounted/negotiated rate of reimbursement)
 - \$2,000 (remaining Healthy People HMO deductible)
 - \$2,000 (Driver’s copayments under Healthy People HMO)

 = \$4,000 Healthy People HMO payment
- Healthy People HMO pays \$0 for chiropractic care because it is not a covered service.
- PIP under Safe Car Insurer pays \$6,000 towards the driver’s outstanding out-of-pocket expenses (chiropractic care charges as well as the remaining deductible and copayments under Healthy People HMO), which exhausts the driver’s \$6,000 PIP benefit.*
- MedPay under Safe Care Insurer pays \$2,000 towards the driver’s remaining out-of-pocket expenses (copayments under Healthy People HMO and chiropractic care charges).
- Driver pays \$0.**

* PIP is not required to pay for a claim (with the exact CPT code and date of service) that PIP initially denied because the Driver elected a \$2000 PIP deductible. Since the provider’s negotiated/allowed amount for a service under Healthy People HMO is likely less than the provider’s charge for the service, the PIP carrier may only deny payment of the claim (with the exact CPT code and date of service) that the PIP carrier initially denied due to the Driver’s election of the \$2,000 deductible.

** If a claim (with the exact CPT code and date of service) initially denied by PIP because of the Driver’s election of a \$2000 PIP deductible is subject to the Healthy People HMO deductible, then the Driver may be responsible for payment of that particular claim.

EXAMPLE 5: Motorcycle Accident

Driver has coverage for an automobile and a motorcycle under Safe Car Insurance. Driver's Safe Car coverage includes PIP (PIP is unavailable when driver operates motorcycle) and MedPay. Driver is covered under Healthy People HMO.

Driver is hurt while operating motorcycle. Total provider charges are \$10,000; Healthy People discounted/negotiated rate for all covered services is \$8,000.

Under Healthy People HMO, Driver has \$3,500 in out-of-pocket costs for covered services:

- \$2,000 deductible (prior to accident, \$1,000 in claims counted toward \$3,000 deductible);
- Ten (10) doctor/PT visits with a total of \$500 in copayments;
- \$500 copayment for Hospital Stay; and
- \$500 in copayments for imaging (x-rays/MRI).

Auto Insurer: Safe Car Insurer		Health Insurer: Healthy People HMO	
Coverage	Limit/Deductible	Coverage	
Personal Injury Protection	\$0 Deductible \$8,000 Limit	Annual Deductible per person/year	\$3,000
		Annual Deductible per family/year	\$5,000
		Out-of-pocket Maximum	\$8,000
Medical Payments	\$5,000 Limit	Doctor Copay (\$) or Coinsurance (%)	\$50
		Chiropractic Copay (\$) or Coinsurance (%)	\$50
		Emerg Dept. Copay (\$) or Coinsurance (%)	\$100
		Hospital Copay (\$) or Coinsurance (%)	\$500
		X-ray/MRI Copay (\$) or Coinsurance (%)	\$100

- PIP pays \$0 [PIP benefits are unavailable for anyone who, at the time of the accident, was operating or occupying a motorcycle];**
- Healthy People HMO pays \$4,500 for covered services:
 - \$8,000 (Healthy People HMO discounted/negotiated rate of reimbursement)
 - \$2,000 (remaining Healthy People HMO deductible)
 - \$1,500 (Driver's copayments under Healthy People HMO)

 = \$4,500 Healthy People HMO payment

- MedPay pays \$3,500 for the Driver's deductible and copayments under Healthy People HMO.

** Please see M.G.L. c. 90, § 34A for other examples where PIP may be unavailable.

Applicability of 211 CMR 38.00

- The provisions of 211 CMR 38.00, including the Order of Benefit Determination section, apply to coverage that: (1) falls under the definition of Plan under 211 CMR 38.02 and (2) is not exempt from state insurance laws.
- Self-funded employee benefit plans are exempt from state insurance laws under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1144, including M.G.L. c. 90, §34A.
- The Group Insurance Commission provides fully-insured and self-funded health insurance to state employees and retirees. Self-funded employee benefit plans are exempt from state insurance laws, including self-funded health benefits plans provided by the GIC.
- Federal law governs the coordination of benefits when an insured is covered by Medicare *and* another health coverage.
 - The Centers for Medicare & Medicaid Services (CMS) sets forth the COB rules when an individual is covered by Medicare and other health coverage. Information about federal COB rules, including the Medicare Secondary Payer (MSP) rules, can be found on the CMS website. In particular, information about the MSP rules can be found at: <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Coordination-of-Benefits-and-Recovery-Overview/Medicare-Secondary-Payer/Medicare-Secondary-Payer.html>

Question 1: 38.02 Definition of Plan and 38.04(2)(b) Rules for COB : Please confirm that Medicare Supplement policies are explicitly excluded from the definition of Plan, and that the reference to “coverage that is obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits” in 38.04(2)(b) does not refer to Medicare Supplement policies.

Response: The Rules for Coordination of Benefits found under 211 CMR 38.02 address the order of benefit payments when a person is covered by two or more *Plans*. Since Medicare Supplement policies are specifically *excluded* from the definition of Plan under 211 CMR 38.02, the rules for coordination of benefits under 211 CMR 34.04 would not apply to Medicare Supplement policies.

Question 2: Is travel insurance considered a plan under the definition?

Response: Accident only coverage (including plans marketed as “travel insurance”) is not included in the definition of Plan under 211 CMR 38.00 and would not be subject to the coordination provisions.

Question 3: *When PIP is excluded for either DUI, operating a motorcycle, Evading police, etc... Is Med pay still secondary to Health insurance?*

Response: Yes. The unavailability of PIP does not impact the provisions of 211 CMR 38.05(1)(b) that provide that Medical Payments coverage under a motor vehicle policy shall always be secondary to and in excess of any Health Benefit Plan or Personal Injury Protection. Where a claimant has health coverage and MedPay, medical claims must be submitted to the health insurance carrier. The insured is entitled to be paid under the Medical Payments coverage for reasonable medical expenses that are not payable under either the Health Benefit Plan *or* under PIP.

Question 4: *38.04(1)(B) Rules for COB - If a health plan member receives out-of-network care following an accident, does 38.04(1)(b) apply? Would MedPay cover the health plan member’s out-of-network services?*

Response: An insured is entitled to receive benefits under his health benefit plan if treatment is sought in accordance with the terms of the health benefit plan. If an insured’s medical expenses are not payable under PIP because the insured elected to go outside his health benefit plan to obtain a medical service that could have been obtained through his health benefit plan, then the insured is entitled to be paid for that out-of-network service by the Medical Payments coverage. See *Dominguez v. Liberty Mut. Ins. Co.*, 429 Mass. 112, 706 N.E.2d 647 (1999).

Question 5: *Please clarify the order of priority specific to Med Pay coverage, when health insurers have an “other insurance” clause in their policies? In the past, health insurers would fail to pay claims until the MedPay was exhausted. However, the new regulation seems to indicate that MedPay is now secondary to Health insurance. It appears that these “other insurance” clauses conflict with the new regulations.*

Response: Under 211 CMR 38.05(1)(b), Medical Payments coverage under a motor vehicle insurance policy shall always be secondary to and in excess of any Health Benefit plan or PIP. Accordingly, a fully-insured health benefit plan may not contain language deferring coverage to MedPay.

Massachusetts Division of Insurance
211 CMR 38.00: Coordination of Benefits FAQ
10/09/2017

In some instances, a health benefit plan may be exempt from state insurance laws or may follow federal coordination of benefits rules. Since self-funded employee benefit plans are exempt from state insurance laws, they may or may not follow a state's COB rules. In some instances, the plan documents of a self-funded health benefit plan may contain language deferring primary coverage to the motor vehicle insurer. If a self-funded health benefit plan *does not* contain such deferral language, then the auto insurer may pay reasonable medical expenses that were not payable under an insured's Health Benefit Plan.

Question 6:

Are MassHealth, Affordable Care Act plans (Obamacare), Massachusetts safety/health net plans, ERISA plans and Medicare all considered health benefit plans under the regulation? We want to make sure that MedPay is excess to all these types of plans.

Response: The provisions of 211 CMR 38.00, including the Order of Benefit Determination section, apply to coverage that: (1) falls under the definition of Plan under 211 CMR 38.02 and (2) is not exempt from state insurance laws. Certain plans are specifically excluded from the definition of Plan, including MassHealth (Medicaid) and Medicare Supplement plans. On the other hand, certain health benefit plans may be exempt from state insurance laws (e.g., self-funded plans) or may follow federal coordination of benefit rules (e.g., Medicare).

“Obamacare” is not a health plan; it is a colloquial term for the provisions of the Affordable Care Act (ACA). Health Benefit Plans that are purchased through an ACA Exchange, even those with subsidies, are private health insurance and are considered “Plans” for the purposes of 211 CMR 38.00.

If a plan follows federal coordination of benefit rules (e.g., Medicare or Tricare), then the auto insurer should pay any benefits in accordance with the applicable federal COB rules.

Question 7: May a provider that has entered into a contractual arrangement with a Health Benefit Plan balance bill an auto carrier (or an insured) for the difference between the negotiated payments and the provider's charge?

Response: Where the Personal Injury Protection coverage and Medical Payments Coverage of a motor vehicle policy are secondary to a Health Benefit Plan, the coordination of benefits rules may not be used by a provider to increase the amount of payment to the provider. Thus, the provider may not bill the motor vehicle policy or the insured the difference between the provider's negotiated payment with the health benefit plan and the provider's charge. Unless otherwise permitted under 211 CMR 38.00, the coordination of benefits rules may not be used to circumvent contractual agreements

Massachusetts Division of Insurance
211 CMR 38.00: Coordination of Benefits FAQ
10/09/2017

between providers and plans by increasing the provider payment or decreasing the amount the provider has negotiated to accept in payment for services, less any required deductibles, coinsurance or copayments.